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STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Murray, C.J., M. J. Kelly and Rick JJ

MACK C. STIRLING,

Petitioner-Appellant,

v

COUNTY OF LEELANAU,

Respondent-Appellee.

SC:

COA: 353117

MOAHR: 19-003870-TT

PETITIONER-APPELLANT MACK STIRLING'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

Respectfully submitted by:

Karla Stirling (UT #10799)
Previously Admitted Pro Hac Vice for Petitioner-Appellant at MI Court of Appeals; Pro Hac Vice application before MI Supreme Court pending
3067 S. 100 W.
Bountiful, UT 84010
(646) 427-8864
stirlink@gmail.com

Wallace H. Tuttle (P21644)
WALLACE H. TUTTLE & ASSOCIATES PC
Local Counsel for Petitioner-Appellant
3229 Logan Valley Rd
PO Box 969
Traverse City, MI 49684
(231) 941-0750
whtpc@tuttlelawtc.com

Dated: May 5, 2021

RECEIVED by MSC 5/5/2021 4:48:53 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES ii

STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT v

QUESTIONS PRESENTED FOR REVIEW vi

I. INTRODUCTION 1

II. STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS 3

A. The Undisputed Material Facts That Led To A Tax Tribunal Appeal 3

B. The Tribunal Grants The Stirlings' Motion for Summary Disposition 5

C. The Court of Appeals Reverses the Tribunal 7

III. STANDARD OF REVIEW 9

IV. ARGUMENT 10

A. The Court of Appeals Decision Wrongly Violated Section 7cc(3)(b)'s Unambiguous Language 10

1. Enforcing unambiguous statutory language is a paramount principle of statutory construction 10

2. Section 7cc(3)(b)'s legal standard, in unambiguous language, is whether the other state's exemption is substantially similar to the PRE 11

3. The Court of Appeals decision violated Section 7cc(3)(b)'s unambiguous legal standard 11

4. The Court of Appeals decision improperly adds a new test that is different from that which the Legislature enacted 13

5. The Tax Tribunal decision effectuated the Legislature's intent 14

B. The Case Meets the MCR 7.305(B) Standard for Granting an Application for Leave to Appeal 15

V. CONCLUSION AND RELIEF REQUESTED 17

RECEIVED by MSC 5/5/2021 4:48:53 PM

INDEX OF AUTHORITIES

CASES **Page(s)**

Drew v Cass Co,
299 Mich App 495; 830 NW2d 832 (2013).....7

Estes v Titus,
481 Mich 573; 751 NW2d 493 (2008).....9

In re Complaint of Rovas,
482 Mich 90; 754 NW2d 259 (2008).....10

Inter Co-op Council v Dep't of Treasury,
257 Mich App 219; 668 NW2d 181 (2003).....11

People v Lewis,
503 Mich 162; 926 NW2d 796 (2018).....10

Putkamer v Transamerica Ins Corp of Am,
454 Mich 626; 563 NW2d 683 (1997).....10

Roberts v Mecosta Cty Gen Hosp,
466 Mich 57; 642 NW2d 663 (2002).....10

SBC Health Midwest, Inc v City of Kentwood,
500 Mich 65; 894 NW2d 535 (2017).....9, 11, 13

South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality,
502 Mich 349; 917 NW2d 603 (2018).....10

TOMRA of North America, Inc v Dep't of Treasury,
505 Mich 333; 952 NW2d 384 (2020).....9, 11

VanderWerp v Plainfield Charter Twp,
278 Mich App 624; 752 NW2d 479 (2008).....7, 8

Wexford Medical Group v City of Cadillac,
474 Mich 192; 713 NW2d 734 (2006).....13

STATUTES

35 ILCS 200/15-175 16

Alaska Stat. § 29.45.050(a).....16

Cal. Rev. & Tax. Code § 218.....16

Cal. Code Regs. tit. 18, § 3(k).....16
Colo. Rev. Stat. § 39-3-203(1).....16
D.C. Code Ann. § 47-850(a).....16
Fla. Stat. § 196.031(1).....14
Fla. Stat. § 196.031(1)(a).....16
Ga. Code Ann. § 48-5-44.....16
Haw., Rev. Ord. § 8-10.4.....16
Idaho Code §63-602G(1).....16
Ind. Code Ann. §6-1.1-12-37.....16
Iowa Code Ann. § 425.1.....16
Kan. Stat. Ann. §79-201x.....16
Ky. Rev. Stat. Ann. § 132.810(1).....16
La. Rev. Stat. Ann. § 47:1703(A),(D), (E).....16
Me. Rev. Stat. Ann. tit. 36, §683(1).....16
N.J. Rev. Stat. § 54:4-6.2 et seq.....16
MCL 211.7cc.....1, 14, 15, 17
MCL 211.7cc(2).....4, 9, 14
MCL 211.7cc(3).....13, 14
MCL 211.7cc(3)(b).....1, 2, 4, 5, 6, 8, 10, 11, 12, 13, 15
MCL 211.7dd.....1, 14, 15
MCL 211.7o.....13
MCL 211.9(1)(a).....13
N.D. Cent. Code §57-02-08.1.....16
Tenn. Code Ann. §67-5-702.....16
Utah Code Ann § 59-2-103(3).....8

RECEIVED by MSC 5/5/2021 4:48:53 PM

Utah Code Ann § 59-2-103(6) 12

Utah Code Ann § 59-2-103(6)(a) 8, 13

Utah Code Ann § 59-2-103(6)(b)(i) 9, 13, 14

Utah Code Ann § 59-2-103(6)(b)(ii) 4, 8, 9, 12, 13

Utah Code Ann § 59-2-103(6)(b)(iii) 4, 8, 9, 13

COURT RULES

MCR 7.305(B) 15, 16

MCR 7.305(B)(2) 16, 17

MCR 7.305(B)(3) 17

MCR 7.305(B)(5) 17

UNPUBLISHED CASES

Boyd v Grand Traverse Cty,
Proposed Opinion and Judgment issued Feb 13, 2017
(MTT Docket No 17-004340) 12

Levenfeld v County of Berrien,
Unpublished Opinion per Curiam of the Court of Appeals, issued Jan 12, 2012
(COA Docket No. 300358 (2012)) 6

Whiting v Grand Traverse Cty,
Final Opinion and Judgment issued Mar 1, 2017
(MTT Docket No 16-005482) 12

RECEIVED by MSC 5/5/2021 4:48:53 PM

RECEIVED by MSC 5/5/2021 4:48:53 PM

STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT

Petitioner-Appellant Mack C. Stirling ("Stirling") seeks leave to appeal the March 25, 2021 published opinion of the Court of Appeals in *Stirling v County of Leelanau*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353117) (the "Opinion"). The Opinion, which is to be published, is attached as Appendix Number 1 ("Appx 1").

The Michigan Tax Tribunal had granted Stirling's motion for summary disposition. The Court of Appeals reversed and ruled for the County of Leelanau (the "County").

Stirling now timely seeks leave to appeal the Court of Appeals' Opinion under MCR 7.305. Stirling asks the Court to grant its application for leave to appeal. In the alternative, Stirling requests that the Court peremptorily reverse the Court of Appeals' Opinion and affirm the Michigan Tax Tribunal Judgment, which granted Stirling summary disposition and ordered that the tax rolls be corrected so that the subject property obtained the principal residence exemption under MCL 211.7cc.

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Michigan Tax Tribunal correctly conclude that a property owner's claim for Utah exemption for rental properties is not substantially similar to Michigan's principal residence exemption ("PRE") because only owner-occupied properties can obtain the PRE?

Stirling answers:	Yes
The County would answer:	No.
The Tax Tribunal answered:	Yes.
The Court of Appeals answered:	No.
This Court should answer:	Yes.

2. When only owner-occupied homesteads qualify for the PRE, did the Tax Tribunal correctly conclude that Stirling's homestead qualified for the PRE, notwithstanding that his spouse had claimed exemption for Utah rental properties based on the rental properties being the residences of third-party tenants?

Stirling answers:	Yes
The County would answer:	No.
The Tax Tribunal answered:	Yes.
The Court of Appeals answered:	No.
This Court should answer:	Yes.

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I. INTRODUCTION

The published decision below wrongly decided the important, yet simple issue of whether a tax exemption claimed for Utah rental properties was substantially similar to Michigan's principal residence exemption ("PRE"). Under sections 7cc and 7dd of the General Property Tax Act (the "Act"), MCL 211.7cc and MCL 211.7dd, the PRE is for an owner-occupied residence and exempts local school millage. The Michigan PRE may only be claimed for owner-occupied residences. A landlord cannot claim the PRE based on a rental property being the tenant's residence.

As of July 1, 2019, Michigan had over 4,629,000 housing units, and over seventy percent were owner-occupied. United States Census Bureau, https://www.census.gov/quickfacts/MI (accessed April 24, 2021). These many homeowners can obtain a PRE, unless disqualified, as can occur if a PRE claimant, or "his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section," MCL 211.7cc(3)(b) ("Section 7cc(3)(b)"). In short, the PRE can be lost by claiming "an **exemption**…substantially similar to the (PRE)." Per this unambiguous language, the legal standard is whether the other state's **exemption** is substantially similar to Michigan's PRE, **not** whether the other state's statute, statutory framework or statutory scheme is substantially similar to the PRE.

For decades, Mack Stirling ("Stirling"), and his wife, Dixie Stirling, have had the same one and only principal residence in Leelanau County. Dixie Stirling claimed exemption for Utah rental properties, based on those properties being the residences of third-party tenants. Ruling for Stirling, the Tax Tribunal properly applied Section 7cc because the exemption claimed for Utah rental units was **not** substantially similar to the PRE.

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The Michigan Court of Appeals made an error of law in reversing the Tribunal. Initially, the Court properly noted that it should effectuate legislative intent by enforcing unambiguous statutory language as written. *Stirling v County of Leelanau*, __ Mich ___; ___ NW2d ___ (2021) at *3, Appx 1. The Court also correctly stated that, "(o)ur focus in conducting the comparison is between the PRE and the exemption 'claimed' by the taxpayer. MCL 211.7cc(3)(b)." *Id* at *5. Unfortunately, the Court then went astray by analyzing statutes, statutory frameworks, and statutory purposes, rather than staying completely focused on the actual exemption claimed for Utah rental properties. *Id* at *5-6. Thus, the Court wrongly ruled based on its analysis of multiple statutory aspects, rather than the actual exemption claimed for rental properties, which is what Section 7cc(3)(b) clearly requires.

The Court violated Section 7cc(3)(b)'s unambiguous language. Section 7cc(3)(b) unambiguously precludes Stirling's PRE only if Dixie Stirling claimed "**an exemption …substantially similar to the (PRE).**" MCL 211.7cc(3)(b). Dixie Stirling claimed an exemption for rental properties, not an owner-occupied residence. The Utah rental properties could not qualify for the PRE, which is limited to owner-occupied residences.

The Tribunal correctly held that an exemption claimed for rental properties in another state is not substantially similar to the PRE.[1] The Court of Appeals published decision is clearly erroneous and could adversely impact numerous Michigan residents. As described below, this is an issue that is important to Michigan's many homeowners and this State's jurisprudence. Unless this Court grants this Application for Leave to Appeal, the Tax Tribunal and future Court of Appeals panels will be bound to apply the mistaken analysis of the Opinion below when

[1] The Tribunal's decision effectuated the Legislature's intent, which was to establish that each person or married couple filing joint tax returns, may have only one principal residence, and, accordingly, Michigan homeowners can claim the PRE or a substantially similar exemption in another state, but they cannot obtain both.

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deciding future cases that will inevitably arise. The Court should grant this application for leave to appeal, or in the alternative, peremptorily reverse the Court of Appeals Opinion, and affirm the Tax Tribunal's Final Opinion and Judgment.

II. STATEMENT OF THE MATERIAL PROCEEDINGS AND FACTS.

A. The Undisputed Material Facts That Led To A Tax Tribunal Appeal.

The material facts are not disputed. Indeed, the County's Answer to Petitioner's Motion for Summary Disposition, p 1, stated: "Leelanau County also stipulates to all material facts put forth by petitioner(s) in their Motion for Summary Disposition." Tax Trib Dkt 16.

Mack and Dixie Stirling have been residents of Michigan since 1979 and have resided exclusively at their home in Traverse City, Michigan, since purchasing it in 1990. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition, Ex A – Affidavit of Mack C. Stirling (statement #1) and Affidavit of Dixie M. Stirling (statement #1), attached as Appendix Number 3 ("Appx 3"). For over 25 years, Dixie Stirling has held an active nursing license in Michigan. *Id* at Ex A – Affidavit of Dixie M. Stirling (statement #2). For over 30 years, Mack C. Stirling has held an active medical license in Michigan. Further, he founded the cardiac surgery program at Munson Medical Center in Traverse City in 1990, where he practiced cardiothoracic surgery full time until his retirement in 2017. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #3). In addition to working and raising a family in Traverse City, the Stirlings have been very active in their local Traverse City church congregation, serving in volunteer positions in their local congregation for many years. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #4) and Affidavit of Dixie M. Stirling (statement #3). In 1994, the Stirlings originally claimed the PRE for their Traverse City residence. Tax Trib Dkt 16, Respondent Answer to Petitioners' Motion for Summary Disposition, p 2.

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During the subject years, 2016-2019, Dixie Stirling owned two rental properties in Utah, one in Provo and one in Bountiful, and the Stirlings never resided at, nor claimed to have resided at, either of them. Appx 3 at Ex A – Affidavit of Mack C. Stirling (statement #5) and Affidavit of Dixie M. Stirling (statement #4); and Appx 3 at Ex B & Ex C (Provo and Bountiful Materials). Since the purchase of the two Utah properties, and at all times relevant herein, the Stirlings have: i) declared to the State of Utah that the Utah properties are tenant-occupied residential rental properties; and ii) paid the property taxes for tenant-occupied residential rental properties pursuant to Utah law, and as calculated by the relevant Utah taxing authorities. *Id* at Ex A – Affidavit of Mack C. Stirling (statement #6) and Affidavit of Dixie M. Stirling (statement #5). Under Utah law, Utah rental properties qualify for a property tax exemption if they are the tenants' residence. Utah Code Ann § 59-2-103(6)(b)(ii). Dixie Stirling claimed this exemption.

During 2019, the County revoked the Stirlings' PRE for the 2016-2019 tax years based on the fact that Dixie Stirling had claimed Utah's exemption for rental properties.[2] Section 7cc(3)(b), MCL 211.7cc(3)(b), provides:

> (3) Except as otherwise provided in subsection (5), a married couple who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property

[2]Under Section 7cc(2), MCL 211.7cc(2), the affidavit claiming the PRE, "shall state that the property is owned and occupied as a principal residence by that owner of the property on the date that the affidavit is signed and shall state that the owner has not claimed a substantially similar exemption, deduction, or credit on property in another state." Michigan's PRE cannot be claimed based on a property being a tenant's residence. It also is undisputed that the Stirlings had lawfully filed the affidavit claiming the PRE, and that this case does not involve the situation where: i) one spouse claims a PRE for a Michigan residence; and ii) the other spouse receives another State's similar exemption for property that has been reported to be the other spouse's principal residence.

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> in another state. Upon request by the department of treasury, the assessor of the local tax collecting unit, the county treasurer or his or her designee, or the county equalization director or his or her designee, a person who claims an exemption under this section shall, within 30 days, file an affidavit on a form prescribed by the department of treasury stating that the person has not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state. If the assessor of the local tax collecting unit, the department of treasury, or the county denies an existing claim for exemption under this section, an owner of the property subject to that denial cannot rescind a substantially similar exemption, deduction, or credit claimed in another state in order to qualify for the exemption under this section for any of the years denied. If a person claims an exemption under this section and a substantially similar exemption, deduction, or credit in another state, that person is subject to a penalty of $500.00. The penalty shall be distributed in the same manner as interest is distributed under subsection (25).
>
> (b) Subject to subdivision (a), that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse **claims an exemption, deduction, or credit substantially similar to the exemption provided under this section**, unless that person and his or her spouse file separate income tax returns. [Emphasis added].

On October 14, 2019, the Stirlings timely appealed the County's decision to the Michigan Tax Tribunal. Tax Trib Dkt 1, Petition.[3]

B. The Tribunal Grants The Stirlings' Motion for Summary Disposition.

This case presented the Tax Tribunal with an issue of law. On December 23, 2019, the Stirlings filed their Motion for Summary Disposition, and on January 7, 2020, the County filed its Answer to the Motion. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition and

[3] On October 14, 2019, as co-owners of the subject property, Mack and Dixie Stirling together filed the Tax Tribunal Petition in this case. Despite Dixie Stirling also being included as Petitioner on the filing documents, the Tax Tribunal treated Mack Stirling as the sole "Petitioner" throughout the proceeding and adjudicated the Stirlings' motion for summary disposition solely in his name. Stirling has taken that approach as a single appellant in this appeal.

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Tax Trib Dkt 16, Answer to Motion. As noted above, the County's Answer accepted the facts stated in the Stirlings' Motion. Tax Trib Dkt 16, Answer to Motion, p 1. Essentially, the Stirlings argued that the exemption claimed for Utah rental properties was not substantially similar to the PRE, and the County argued that it was substantially similar.

In its decision, the Tribunal accurately framed this case's legal issue:

> The parties dispute the applicability of a disqualifying factor for a PRE under MCL 211.7cc(3)(b), which provides that a person may not receive a PRE in any calendar year under certain conditions:
>
> [T]hat person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section, unless that person and his or her spouse file separate income tax returns.

Tax Trib Dkt 19, Final Opinion and Judgment, p 2, attached as Appendix Number 2 ("Appx 2"). The Tribunal also correctly analyzed this case's legal issue, and determined that the Utah property tax exemption for rental properties was not substantially similar to Michigan's PRE:

> **Here, it is undisputed that Petitioner's spouse receives the Utah exemption for "the primary residence of a tenant." In contrast, the PRE exemption in Michigan is for a property "owned and occupied as a principal residence by that owner of the property...."** The Court in *Levenfeld* agreed with the Tribunal's reading of MCL 211.7cc(3)(b)…"that the Legislature was concerned with the 'type' of exemption, as in a 'homestead' exemption, when mandating a comparison of statutory schemes…." The exemption in Utah applies as long as it is a primary residence and there is no requirement that the same person both own and occupy the property. **Thus, the Tribunal concludes that the Utah exemption received by Petitioner's spouse is not substantially similar to the Michigan PRE because it is not for property occupied by the owner, i.e., a homestead**. Though Michigan law allows for a person that does not hold a property in fee simple to obtain a PRE, this is accomplished by defining those persons as "owners." Accordingly, there being no material facts in dispute, summary disposition is warranted in Petitioner's favor.

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Id at p 3 (emphasis added; citations omitted). The Tribunal recognized that the Utah exemption claimed for rentals that were the tenants' residences was not substantially similar to the PRE, which is only for an owner-occupied residence.

C. The Court of Appeals Reverses the Tribunal.

The County appealed to the Court of Appeals. The Parties' arguments in the Court of Appeals, essentially, were the same as in the Tax Tribunal.

In its decision, the Michigan Court of Appeals noted that the facts were not disputed. While not critical to the decision in this case, the Court's brief description of the facts is not completely accurate. The Court stated that "the Utah tenants (petitioner's family members) used the properties as their principal residences." The Opinion at *1, Appx 1. During the 2016-2018 years, Dixie Stirling leased the Bountiful property to her daughter and son-in law, who were in their late thirties and had three children. Tax Trib Dkt 13, Petitioners' Motion for Summary Disposition, at Ex A – Affidavit of Mack C. Stirling (statement #5) and Affidavit of Dixie M. Stirling (statement #4); and at Ex C, Appx 3. During the 2016-2019 years, she leased the Provo property to individuals who were not related to the Stirlings.[4]

Regarding the applicable law, the Court correctly recited the applicable rules of statutory construction as follows:

> "It is well established that the primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature." *VanderWerp*, 278 Mich App at 627. "The words used by the Legislature in writing a statute provide us with the most reliable evidence of the Legislature's intent." *Drew v Cass Co*, 299 Mich App 495, 499; 830 NW2d 832 (2013). "If the statutory language is clear and unambiguous, this Court must apply the

[4] While the record does not include all of these details, these facts could be easily confirmed, and may even be matters of public records. Fortunately, in this case these facts are not material because it is undisputed that Dixie Stirling claimed a Utah exemption for rental properties, not owner-occupied residences.

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> statute as written, and no further judicial construction is necessary or permitted." *VanderWerp*, 278 Mich App at 627.

The Opinion at *3, Appx 1. Also, the Court accurately identified the test for this case: "**Our focus in conducting the comparison is between the PRE and the exemption "claimed" by the taxpayer**. MCL 211.7cc(3)(b)." *Id* at *5 (Emphasis added). Thus, the Court recognized that under Section 7cc(3)(b)'s unambiguous language, the question is whether the Utah exemption claimed for rental properties is substantially similar to the PRE, which is for an owner-occupied residence.

Despite the foregoing, the Court embarked on an analysis comparing Utah and Michigan statutory frameworks and characteristics:

> Our focus in conducting the comparison is between the PRE and the exemption "claimed" by the taxpayer. MCL 211.7cc(3)(b). Here, that is the residential property exemption contained in Utah Code § 59-2-103(3), which is limited to one primary residence per household, Utah Code § 59-2-103(6)(a), but which can be claimed for residences occupied in two different ways. Utah Code § 59-2-103(6)(b)(*ii*) and (*iii*)**. This framework for our analysis steers us to the conclusion that the Utah exemption claimed by petitioner was substantially similar to the PRE.** This conclusion is based on several considerations. First, the "substantial similarity" standard is not so demanding that it requires exactness. The meaning of the common but statutorily undefined word "substantial" is "being largely but not wholly that which is specified," while "similar" is defined as "having characteristics in common" and "alike in substance or essentials." *Merriam-Webster's Collegiate Dictionary* (11th ed.). Taken together, we conclude that the Legislature's requirement that the other state exemption claimed by the homeowner be "substantially similar" to Michigan's means that the Sister State's exemption must be largely but not wholly alike in its characteristics and substance to the PRE.
>
> **Second, applying that definition here, there is no dispute that the main characteristic of the Utah statute, like the PRE, is to grant an exemption to a person who owns a primary residence in that state. It in fact seems clear that the primary purpose and characteristic of both statutes is to grant property tax relief to a person for a home that is used as a primary**

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> **residence. Third, when looking at the substance of the two exemptions, the Utah exemption claimed by petitioner goes further than the PRE by granting the exemption to a homeowner who does not occupy the home, but that is occupied by a tenant as a primary residence**. Utah Code § 59-2-103(6)(b)(*ii*). Although Michigan's PRE is more limited by applying only to the owner of the property who uses the property as a primary residence, MCL 211.7cc(2), the primary character and substance of both statutes is providing an exemption for a *homeowner's* primary residence that is *occupied as a primary residence.* **We hold that these overarching provisions make the Utah exemption claimed by petitioner substantially similar to the PRE.** [Emphasis added].

The Opinion at *5-6, Appx 1.[5]

The Court concluded that Utah's exemption for rental property was substantially similar to the PRE. *Id.* at *1. Stirling now seeks Leave to Appeal the Court of Appeals' decision, or an order that peremptorily reverses the Court of Appeals Opinion and affirms the Tribunal's decision.

III. STANDARD OF REVIEW

The Tax Tribunal granted Stirling summary disposition. Consequently, review is *de novo*. *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 338; 952 NW2d 384 (2020). This Court also reviews *de novo* questions of statutory interpretation. *Estes v Titus*, 481 Mich 573, 578-79; 751 NW2d 493 (2008). In *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 70-71; 894 NW2d 535 (2017) (citations omitted), this Court recently summarized the appropriate standard of review for a Tax Tribunal statutory construction decision as follows:

> This Court reviews *de novo* the tribunal's interpretation of a tax statute. "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." "This requires us to consider the plain meaning of the critical word or phrase as well as its placement

[5] As Utah Code § 59-2-103(6)(b)(iii) had not been at issue, it is possible that the Court of Appeals intended to cite Utah Code § 59-2-103(6)(b)(i) and (iii), rather than (ii) and (iii).

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> and purpose in the statutory scheme." This Court, as with all other courts, must give effect to every word, phrase, and clause in a statute, to avoid rendering any part of the statute nugatory or surplusage. Though this Court will generally "defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer," that deference will not extend to cases in which the tribunal makes a legal error. Thus, agency interpretations are entitled to "respectful consideration" but cannot control in the face of contradictory statutory text.[6]

IV. ARGUMENT

A. The Court of Appeals Decision Wrongly Violated Section 7cc(3)(b)'s Unambiguous Language.

1. Enforcing unambiguous statutory language is a paramount principle of statutory construction.

"The principal goal of statutory interpretation is to give effect to the Legislature's intent." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). The "most reliable evidence of that intent is the plain language of the statute." *Id*. If a statute's "language is clear and unambiguous," the Court will enforce the statute "as written." *People v Lewis*, 503 Mich 162, 165; 926 NW2d 796 (2018). This Court has repeatedly reaffirmed this. See, e.g., *Roberts v Mecosta Cty Gen Hosp*, 466 Mich 57, 64; 642 NW2d 663 (2002) ("Since the statute is clear and unambiguous, this Court is required to enforce [it] as written."); *Putkamer v Transamerica Ins Corp of Am*, 454 Mich 626, 631; 563 NW2d 683 (1997) ("Where the language of a statute is clear and unambiguous, the

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[6] *In re Complaint of Rovas*, 482 Mich 90, 103; 754 NW2d 259 (2008), described the respectful consideration given the statutory consideration of an agency, such as the Tax Tribunal, as follows:

> This standard requires "respectful consideration" and "cogent reasons" for overruling an agency's interpretation. Furthermore, when the law is "doubtful or obscure," the agency's interpretation is an aid for discerning the Legislature's intent. **However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.** [Emphasis added]

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courts must apply the statute as written."). Recently, in *SBC Health Midwest,* 500 Mich 65, 70-73, this Court applied this bedrock principle in enforcing an unambiguous statute and granting another property tax exemption. As described, *supra*, the Court of Appeals Opinion accurately described the statutory construction principles governing this case, including that unambiguous language should be enforced. The Opinion at *3, Appx 1.[7]

2. Section 7cc(3)(b)'s legal standard, in unambiguous language, is whether the other state's exemption is substantially similar to the PRE.

Section 7cc3(b) is quoted above at 4-5. It unambiguously provides that the PRE is lost by claiming "an exemption…substantially similar to the (PRE)." Therefore, the test here is simply whether the other state's exemption is substantially similar to the PRE, **not** whether the other state's statute, statutory framework or statutory scheme is substantially similar to the PRE.

3. The Court of Appeals decision violated Section 7cc(3)(b)'s unambiguous legal standard.

Applying Section 7cc(3)(b)'s unambiguous language, the Utah exemption Dixie Stirling claimed for rental properties was not substantially similar to the PRE. The Utah exemption Dixie Stirling claimed was for rental properties, not owner-occupied residences. Furthermore, the Utah exemption was based on the rental being the fulltime residence of the tenant (as opposed to being a short-term or vacation rental, which does not qualify for exemption in Utah). Those facts do not satisfy the requirements for the PRE. The PRE applies only to owner-occupied residences. The exemption Dixie Stirling claimed for rental properties is substantially

[7] The County may assert the cannon that exemption statutes are strictly construed. In *TOMRA of North America, Inc v Dep't of Treasury*, this Court recently clarified that this "is a canon of last resort" to be employed "only when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity." 505 Mich 333, 343; 952 NW2d 384 (2020) (internal quotation marks omitted). Similarly, in *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003), the Court of Appeals held that, "[w]hile tax exemption statutes are strictly construed in favor of the government, they are to be interpreted according to ordinary rules of statutory construction." Given that Section 7cc(3)(b) is unambiguous, the cannon of strict construction does not apply here.

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different from the PRE.

The County has argued, and the Court of Appeals agreed, that Utah's exemption was substantially similar to the PRE because Utah's statutory framework included exemption for owner-occupied residences. However, the Court of Appeals recognized that per Section 7cc(3)(b)'s unambiguous language, the Court's focus was supposed to be a "comparison… between the PRE and the exemption 'claimed' by the taxpayer. MCL 211.7cc(3)(b)." Dixie Stirling did not claim Utah's exemption for an owner-occupied residence.[8]

The Utah exemption claimed by Dixie Stirling pursuant to Utah Code Ann § 59-2-103(6)(b)(ii) was not substantially similar to the PRE. Utah Code Ann § 59-2-103(6) provides:

> (6)
>
> (a) Except as provided in Subsections (6)(b)(ii) and (iii), a residential exemption described in Subsection (3) is limited to one primary residence per household.
>
> (b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (3) for:
>
> (i) subject to Subsection (6)(a), the primary residence of the owner;
>
> (ii) each residential property that is the primary residence of a tenant; and
>
> (iii) subject to Subsection (7), each residential property described in Subsection 59-2-102(34)(b)(ii) [property under construction or vacant but that will be used for residential

[8] Below, the Court of Appeals disagreed with the Tax Tribunal's reading of two prior Tribunal decisions, *Whiting v Grand Traverse Co*., unpublished opinion of the Michigan Tax Tribunal, issued March 1, 2018 (Docket No. 16-005482) (Appx 4), and *Boyd v Grand Traverse Co.*, unpublished opinion of the Michigan Tax Tribunal, issued March 20, 2018 (Docket No. 17-004340) (Appx 5). The Opinion at *5, 6, n 4 and n 6 (Appx 1). The Tax Tribunal's reading of those decisions was reasonable. More importantly, indeed most importantly, even if in those cases the taxpayers had claimed Utah's exemption for rental properties, Tribunal decisions holding that such claimed exemptions are substantially similar to the PRE would be unlawful for the same reason as the Court of Appeals decision. Such decisions violate unambiguous statutory language.

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purposes].

While the exemptions allowed under Utah Code Ann § 59-2-103(6)(a) and (b)(i) are substantially similar to the PRE, it is clear that the exemptions allowed pursuant to Utah Code Ann § 59-2-103(6)(b)(ii) and (iii) are not because neither exemption would be allowed pursuant to the PRE, which requires that the property be occupied by its owner as the owner's residence.

Below, the Tax Tribunal correctly enforced Section 7cc(3)(b)'s unambiguous language. The Court of Appeals violated that plain language.[9]

4. The Court of Appeals decision improperly adds a new test that is different from that which the Legislature enacted.

By ruling based on statutory standards that the Legislature never enacted, the Court of Appeals unlawfully injected new provisions into the Act. In relatively recent years, this Court has more than once needed to correct this mistake in property tax exemption cases. In *Wexford Medical Group v City of Cadillac,* 474 Mich 192, 221; 713 NW2d 734 (2006), this Court held that the Tax Tribunal and Court of Appeals erred by reading into Section 7o, MCL 211.7o, a charity threshold that was not in the statute. Similarly, in *SBC Health Midwest, Inc,* 500 Mich at 72-73, this Court repudiated the Tax Tribunal's reading of Act Section 9(1)(a), MCL 211.9(1)(a), where the Tribunal unlawfully added "nonprofit" to the statute, and wrongly held that the personal property of for-profit educational institutions was taxable. Likewise, here, the Court of Appeals imposed standards into Section 7cc(3) that the Legislature never enacted. It remains important for this Court to intercede again and correct a decision that has improperly added provisions into a statute that the Legislature never enacted.

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[9] Stirling is not disputing whether the Court of Appeals correctly decided the meaning of "substantially similar." That could be disputed, but it is unnecessary to do so. Even using the Court of Appeals' construction, or any reasonable construction of "substantially similar," the Utah exemption claimed for rentals was not substantially similar to the PRE. Indeed, the Utah exemption claimed for rental properties is substantially different from the PRE.

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5. The Tax Tribunal decision effectuated the Legislature's intent.

The Legislature designed the PRE to limit the exemption to owner-occupied properties of Michigan residents, and to prevent individuals (and in some cases, married couples) from claiming more than one PRE type of exemption for an owner-occupied property at any given time. The provisions within Section 7cc(2) and (3) prohibit individuals from claiming more than one PRE in Michigan, limit claims to residents of Michigan, prohibit shifting PRE claims back and forth between properties in an attempt to keep multiple properties exempt, and prohibit a Michigan PRE for those who have claimed "a substantially similar exemption, deduction, or credit on property in another state…." Viewing Section 7cc(3) in context with the rest of the statute, the "substantially similar" provision clearly references an exemption/deduction/credit for an owner-occupied residential property.

The Tribunal's decision effectuated the Legislature's intent, which was to establish that each person, or married couple filing joint tax returns, may have only one principal residence, and, accordingly, such Michigan homeowners can claim the PRE, or a substantially similar exemption in another state, but they cannot obtain both. Multiple states provide favorable property tax treatment for owner-occupied homestead properties. Utah has such a provision, as does Florida. Utah Code Ann § 59-2-103(6)(b)(i); Fla. Stat. § 196.031(1). In Sections 7cc and 7dd, the legislature made clear that Michigan residents, and such residents who were married and filed joint tax returns, should not be receiving the PRE and favorable property tax treatment for an owner-occupied residence in another state.

Legislators did not need to confer with creative tax professionals to recognize that some taxpayers might, for example, have one spouse claim a Michigan residence and PRE, while the other spouse claimed a Florida residence with Florida's favorable property tax treatment for an owner-occupied residence. With all the Michigan snowbirds who winter in Florida, Michigan

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legislators would have readily recognized the likelihood of such abuses occurring. Sections 7cc and 7dd prevent that abuse, and by the legislature's using "substantially similar," it does not matter whether Florida, Utah, or another state label the tax treatment as applying to a "principal residence," or a "homestead," nor does the amount of the tax savings matter.

That potential abuse, however, is very different from the exemption that Dixie Stirling claimed for Utah rental properties. The abuse just described, where Michigan homeowners claim exemptions in multiple states for owner-occupied residences, is quite different from the situation where a Michigan resident owns rental properties in other states, and those states provide favorable tax treatment based on such rental property being tenant-occupied. The unambiguous language of Section 7cc(3)(b), which makes the test the exemption claimed (and not the similarity of the other state's terminology or statutory framework), confirms that the legislature was concerned about a Michigan homeowner obtaining an exemption for multiple owner-occupied properties, not for rental properties in other states.

B. The Case Meets the MCR 7.305(B) Standard for Granting an Application for Leave to Appeal.

MCR 7.305(B) contains multiple grounds for granting an application for leave to appeal. The rule suggests that the Court should grant an application when it considers an issue of significant public interest that involves a subdivision of the state, a legal principle of major significance to the state's jurisprudence, or if the Court of Appeals' decision is clearly erroneous and will cause material injustice:

> **(B) Grounds**. The application must show that
>
> ***
>
> (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions

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> or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
>
> (3) the issue involves a legal principle of major significance to the state's jurisprudence;
>
> ***
>
> (5) in an appeal of a decision of the Court of Appeals,
>
> (a) the decision is clearly erroneous and will cause material injustice, or
>
> (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals . . . .

MCR 7.305(B).

Stirling's application satisfies these grounds. Given the millions of homeowners in this state, this case's issue has significant public interest, and the case is against the County of Leelanau, a subdivision of the state. MCR 7.305(B)(2). Indeed, with the *Whiting* and *Boyd* cases mentioned above, this case is the third time in recent years that the Tax Tribunal has addressed this type of issue, which may explain why the Court of Appeals decided to issue a published decision. A number of other states provide exemptions and credits for certain residential properties.[10] Thus, the issue presented in this case – whether another state's exemption or credit is "substantially similar" to the PRE – is likely to recur. Unless this Court intervenes, the erroneous analysis of the Court of Appeals published decision below will be binding upon future decisions of the Tax Tribunal and future panels of the Court of Appeals.

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[10] See, e.g., Kan. Stat. Ann. §79-201x; N.D. Cent. Code §57-02-08.1; Tenn. Code Ann. §67-5-702; Fla. Stat. § 196.031(1)(a); Alaska Stat. § 29.45.050(a); Cal. Rev. &Tax. Code § 218; Cal. Code Regs. tit. 18, § 3(k); Colo. Rev. Stat. § 39-3-203(1); D.C. Code Ann. § 47-850(a); Ga. Code Ann. § 48-5-44; Haw., Rev. Ord. § 8-10.4; Idaho Code §63-602G(1); 35 ILCS 200/15-175; Ind. Code Ann. §6-1.1-12-37; Iowa Code Ann. § 425.1; Ky. Rev. Stat. Ann. § 132.810(1); La. Rev. Stat. Ann. § 47:1703(A),(D), (E); Me. Rev. Stat. Ann. tit. 36, §683(1); and N.J. Rev. Stat. § 54:4-6.2 et seq. The foregoing list is not exhaustive.

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This Court has consistently enforced unambiguous statutes as written, including property tax exemption statutes. Here, the Court of Appeals has undermined those important holdings and the principles on which they rely, in a published decision. See MCR 7.305(B)(3) and (B)(5). Furthermore, it would be terribly unjust to deny Stirling the PRE, when he and his wife have had the same residence in Leelanau County for decades, and in all the years of living there, neither has claimed a property tax exemption for another property based on the other property being their principal residence. This Court should not condone the Court of Appeals' decision, which deprives homeowners of the PRE, based on a legal standard that the Legislature never enacted.

This case "involves a legal principle of major significance to the state's jurisprudence." MCR 7.305(B)(3). Additionally, the Court of Appeals' judgment is clearly erroneous and will cause a material injustice to Stirling, and other Michigan homeowners, who are entitled to the PRE. MCR 7.305(B)(5).

Under MCR 7.305(B)(2), (B)(3), and (B)(5), the Court should grant the Stirling's application to consider these jurisprudentially significant issues.

V. CONCLUSION AND RELIEF REQUESTED

For the reasons described above, Stirling asks the Court to grant his application for leave to appeal. In the alternative, Stirling requests that the Court enter an order that peremptorily reverses the Court of Appeals Opinion, affirms the Tax Tribunal's Opinion and Judgment, which granted Stirling summary disposition and ordered that the tax rolls be corrected so that the subject property obtained the principal residence exemption under MCL 211.7cc, and grant Stirling such other relief as the Court deems just and proper.

Dated: May 5, 2021

Respectfully submitted,

/s/ Karla Stirling

Karla Stirling (UT #10799)
Previously Admitted Pro Hac Vice for Petitioner-Appellant at MI Court of Appeals; Pro Hac Vice application before MI Supreme Court pending
3067 S. 100 W.
Bountiful, UT 84010
(646) 427-8864
stirlink@gmail.com

WALLACE H. TUTTLE & ASSOCIATES PC

/s/ Wallace H. Tuttle

Wallace H. Tuttle (P21644)
Local Counsel for Petitioner-Appellant
3229 Logan Valley Rd
PO Box 969
Traverse City, MI 49684
(231) 941-0750
whtpc@tuttlelawtc.com

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing using the MiFile/TrueFiling System which will send notification of such filing to all registered counsel of record. I further certify that I filed notices of the filing of the foregoing with the clerks of the Court of Appeals and Michigan Tax Tribunal as MCR 7.305(A)(3) requires.

Date: May 5, 2021

Respectfully submitted,

/s/ Wallace H. Tuttle

Wallace H. Tuttle (P21644)
WALLACE H. TUTTLE & ASSOCIATES PC
Local Counsel for Petitioner-Appellant
3229 Logan Valley Rd
PO Box 969
Traverse City, MI 49684
(231) 941-0750
whtpc@tuttlelawtc.com